HELP GUIDE FOR SCHOOL ADMINISTRATORS
WHAT SUCCESSFUL SCHOOL PRINCIPALS DO (AND NEED TO KNOW)
LEGAL ASPECTS OF SPECIAL EDUCATION

Alabama State Department of Education
Office of Learning Support
Special Education Services
Montgomery, Alabama

May 2013
No person shall be denied employment, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program or activity on the basis of disability, gender, race, religion, national origin, color, age or genetics. Ref: Sec. 1983, Civil Rights Act, 42 U.S.C.; Title VI and VII, Civil Rights Act of 1964; Rehabilitation Act of 1973, Sec. 504; Age Discrimination in Employment Act; The Americans with Disabilities Act of 1990 and The Americans with Disabilities Act Amendments Act of 2008; Equal Pay Act of 1963; Title IX of the Education Amendment of 1972; Title II of the Genetic Information Nondiscrimination Act of 2008: Title IX Coordinator, P.O. Box 302101, Montgomery, Alabama 36130-2101 or call (334) 242-8165.
ACKNOWLEDGEMENTS

This Help Guide was developed through the combined efforts of the Special Education Services Section, Office of Learning Support, Alabama State Department of Education.

Special recognition for their guidance and suggestions is also extended to:

Mrs. Julie Weatherly, Legal Consultant

Council for Leaders in Alabama Schools (CLAS) School Administrators
# Table of Contents

Introduction 5

I. General Questions About the Laws That Apply and Their Provisions 5

II. Special Education Rights/Procedural Safeguards 10

III. The Special Education Process—Child Find, Evaluation, and Eligibility 12

IV. The IEP Process/Procedures and Content 23

V. Placement and Parent Consent Questions 33

VI. Least Restrictive Environment/Inclusion 36

VII. Miscellaneous Special Education Service Issues 40

VIII. IEP Implementation and Monitoring 42

IX. Review/Revision of IEPs/Change of Placement 43

X. Students With Disruptive Behaviors and Discipline 44

XI. Transfer Students—In and Out of State 55

XII. FERPA/Confidentiality/Student Records 57

XIII. Students With Disabilities Placed in Private Schools 59

XIV. State Assessment/Grading/Credits 60

XV. Diploma Options/Promotion/Retention/Graduation 63

XVI. Equal Access/Equal Treatment Issues 64

XVII. Personnel/Professional Development Requirements 65
INTRODUCTION

This guide is designed to assist school administrators in increasing their knowledge of a school’s obligation for implementing the Individuals With Disabilities Education Act (IDEA), to provide assistance for them in making legally sound decisions, and to assist them in avoiding common legal mistakes. In the development of this guide school principals were asked to submit questions for review by the Alabama State Department of Education (ALSDE), Office of Learning Support, Special Education Services Section, and Consultant Julie Weatherly. As a result, the Q&A Section is based largely upon real questions specifically posed by school principals regarding special education legal issues and requirements.

Of course, this guide is not intended to cover every special education legal question that a school principal may have. It is always advisable, even if your question is covered, to seek guidance from your school district’s special education coordinator and, in complex situations, from the school district’s school board attorney. This guide is not designed to provide legal advice as to fact-specific situations.

<table>
<thead>
<tr>
<th>I. GENERAL QUESTIONS ABOUT THE LAWS THAT APPLY AND THEIR PROVISIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Legal Overview Questions</td>
</tr>
<tr>
<td>1. What federal laws do I need to be aware of that apply to students with disabilities in school?</td>
</tr>
<tr>
<td>The primary federal law that applies to public education of students with disabilities is the Individuals With Disabilities Education Act (IDEA). The IDEA requires the creation of special education programs to eligible students and the provision of free appropriate public education (FAPE) to them through the development of an Individualized Education Plan (IEP).</td>
</tr>
<tr>
<td>Another significant federal law that you need to keep in mind is Section 504 of the Rehabilitation Act of 1973 (Section 504). This law prevents discrimination solely on the basis of disability and requires school administrators to ensure that students identified as disabled (both under IDEA or Section 504 only) are provided an equal opportunity to participate in all school and school-sponsored programs and activities.</td>
</tr>
<tr>
<td>Also relevant is the Family Educational Rights and Privacy Act (FERPA), which protects the confidentiality of personally identifiable information contained in student education records.</td>
</tr>
<tr>
<td>2. Are there Alabama laws that apply too?</td>
</tr>
<tr>
<td>Yes. Act 106 and the Alabama Administrative Code (AAC) set out Alabama’s requirements for educating students with disabilities and reflect Alabama’s</td>
</tr>
</tbody>
</table>
requirements for ensuring that the requirements of the IDEA are met. Generally, the AAC contains the same requirements as the IDEA for ensuring the provision of FAPE.

3. **Can parents be charged for special education services?**

   No. Required special education services that are included in a student’s IEP are to be provided by the school district at no cost to the parent. However, this does not preclude the school district from charging incidental participation fees that are normally charged to a student without a disability or to his/her parents as part of the general education program.

4. **If the program for a student with a disability costs much more than a program for a student without a disability, must it be provided?**

   Yes. An appropriate program of instructional and related services must be provided for a student with a disability regardless of the cost. Lack of funding is not an acceptable excuse for failing to provide services that meet the individual needs of the student with a disability.

5. **Can a disability ever be so severe that the student is beyond the scope of educational responsibility?**

   No. Under the IDEA, the concept of “zero reject” applies. This means that all students with disabilities, no matter how severe, are entitled to a free appropriate public education. No student is too severe to be unable to learn or benefit from educational services. If a student’s needs are determined by his/her IEP Team to be beyond what the school district can provide, the IEP Team is still required to propose a program to meet the student’s needs no matter how intensive or costly. This might include placement in a private school or even a residential treatment program.

B. **Questions Regarding Who is Covered under IDEA**

1. **Who does the IDEA cover as far as services?**

   The IDEA provides that all eligible “children with disabilities” ages 3-21 are provided a free appropriate public education (FAPE). The IDEA also provides significant procedural safeguards to them and their parents.

2. **Define a “child with a disability.” What exceptionalities or disabilities are currently included under the IDEA?**

   In Alabama, a student may be eligible for special education services if he/she has one of the following disabilities that adversely affect
educational performance and the student needs special education (specially designed instruction) and related services:

a. Autism (AUT).
b. Deaf-Blindness.
c. Developmental Delay (DD).
d. Emotional Disability (ED).
e. Hearing Impairment (HI).
f. Intellectual Disability (ID).
g. Multiple Disabilities (MD).
h. Orthopedic Impairment (OI).
i. Other Health Impairment (OHI).
j. Specific Learning Disability (SLD).
k. Speech or Language Impairment (SLI).
l. Traumatic Brain Injury (TBI).
m. Visual Impairment (VI).

The AAC sets forth the detailed criteria for eligibility for each category, and the criteria must be met in order for a student to be considered a “child with a disability.”

3. **Why is it not mandated that special education funds be expended to provide adequate services for gifted students?**

Gifted services are funded by the state, not federal funds. Gifted is not one of the disability areas recognized under the IDEA.

4. **What is the current mandated age range for special education services?**

In Alabama, school districts must develop and implement procedures that ensure that all students with disabilities in their jurisdiction, ages 3-21, who need special education and related services are identified, located, and evaluated through child find. If a student is determined eligible, he/she must be offered FAPE until age 21.

5. **Can all students be limited to 12 years of services, or must services be provided up to age 21 to those with disabilities?**

Students with disabilities are eligible to receive FAPE and services up to age 21 or until such time as the student earns a Alabama High School diploma, whichever occurs first.
6. Who are “parents” under the IDEA? What about those who are divorced or have joint custody? When there is only one parent with custody, is that the only “parent” for purposes of IDEA protections?

To answer this series of questions, we need to examine the definition of “parent” under the IDEA. For purposes of the IDEA rights and activities, “parent” is defined as follows:

1. A biological or adoptive parent of a student;
2. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
3. A guardian generally authorized to act as the student’s parent or authorized to make educational decisions for the student (but not the state if the student is a ward of the state);
4. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the student lives or an individual who is legally responsible for the student’s welfare; or,
5. A surrogate parent who has been appointed for the student.

When the biological or adoptive parent is attempting to act as the parent for purposes of the IDEA rights and activities but there are others who also meet the definition and want to act as “parent,” the law presumes that the biological or adoptive parent is the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the student.

If a judicial decree or order identifies a specific person or persons listed above to act as the “parent” of a student or to make educational decisions on behalf of the student, then that person or persons is deemed to be the “parent” for purposes of the IDEA.

7. So, in the case of divorced parents, does the noncustodial parent have any IDEA rights, such as the right to participate in the child’s education and to attend IEP meetings?

A parent who is not the custodial parent does not lose his/her IDEA rights. As long as the noncustodial parent is a “biological parent” and there is no court order specifying someone else to be the “parent” for educational purposes, the noncustodial parent has the same right as the custodial parent to participate in meetings, receive important notices, etc., under the IDEA. So, if a noncustodial parent wants to be included by the school as a
“parent” for purposes of IDEA rights, the school must include that parent, unless there is some sort of court order/decree that specifies otherwise. There is no obligation on the part of the school to “seek out” noncustodial parents. If they wish to be involved non-custodial parents must make themselves known to the school.

8. **What if the only “parent” the school has dealt with is the student’s grandmother or other relative?**

Individuals “acting in place of” the biological or adoptive parent may be treated as the parent under the IDEA if there is no known biological or adoptive parent who wishes to act as the parent, and the student lives with that relative, and/or parental rights have been removed from the biological parent/s. Thus, it is legally acceptable for the school to deal with the relative as a “parent,” unless and until a biological or adoptive parent appears and wants to assume the role of parent under the IDEA.

9. **What about a foster parent? Can the foster parent be the “parent” under IDEA?**

When the rights of the biological or adoptive parents have been terminated and the student is placed in a foster home, the foster parent can act as the parent under the IDEA. However, if there is a known biological or adoptive parent whose rights have not been terminated who is still involved in the student’s life who wants to assert his/her parent rights and be treated as the parent under the IDEA, the school must work with the biological parent as the “parent” under the IDEA, even if the student lives with the foster parent and the foster parent knows the student better. The presumption under the law is that when a biological or adoptive parent that wishes to participate as the “parent” under the IDEA, that biological or adoptive parent maintains the IDEA rights.

10. **What about the situation where a Department of Human Resources (DHR) caseworker wants to sign as the consenting parent for evaluations and special education services?**

A DHR caseworker is NOT a “parent” for purposes of the IDEA. DHR is a state agency and its representatives may not serve or sign as “parents” under the IDEA.

11. **What if the biological parent wants to send someone to an IEP meeting in his/her place, such as a boyfriend who lives with the mother?**

The parent is allowed to invite anyone to an IEP meeting to participate. However, since there is still a biological parent “on the scene” and the
school is aware of this, anything that requires parental consent will have to be presented to the biological or adoptive parent. For example, if the district wants to conduct an evaluation, the mother’s boyfriend cannot consent. While the boyfriend may participate in meetings, etc., he is not the “parent,” and the school will need to get the parent to consent to the evaluation, placement, etc.

12. **How do we proceed with the special education process or obtain consent from the parent/s if the parent/s is incarcerated and his/her parental rights are not revoked?**

Incarcerated parents are still the biological or adoptive parents unless their rights have been legally terminated. Thus, the school must send notices to incarcerated parents in this situation. If a parent’s educational decision-making rights have not been revoked and the Department of Corrections allows for their participation, parents may participate by phone or by providing written input.

13. **What is a surrogate parent, and what are a surrogate’s rights and responsibilities?**

A surrogate parent is a person appointed by the school district to represent the interests of a student with a disability in the educational decision-making process when no parent is known and the school district, after reasonable efforts, cannot locate the student’s parents. In addition, a surrogate would be appointed for a student who is a ward of the state because parental rights have been terminated.

Once a surrogate has been properly appointed, the surrogate has all of the rights and responsibilities of a parent under the IDEA, which includes the opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of FAPE to the student. This includes being part of all meetings to address evaluation, eligibility, and educational placement; having their concerns and information considered in developing and reviewing a student’s IEP; and being regularly informed of the student’s progress toward annual IEP goals.

---

**II. SPECIAL EDUCATION RIGHTS/PROCEDURAL SAFEGUARDS**

1. **What are the procedural safeguards under IDEA?**

The procedural safeguards or “Special Education Rights” available to parents and their children are extensive. A copy of the “Special Education Rights” form must be provided to parents at least once per school year and at certain required times and must include a full explanation of the procedural safeguards related to:
(1) Independent educational evaluations;
(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including--
    i. The time period in which to file a complaint;
    ii. The opportunity for the agency to resolve the complaint; and
    iii. The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedure;
(6) The availability of mediation;
(7) The student’s placement during pendency of hearings on the due process complaint;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of students in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (not applicable in Alabama);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys’ fees.

2. Must a school have parents acknowledge in writing that they received the Special Education Rights?

   Not necessarily, particularly if it is the practice to physically provide them at the IEP Team meeting itself, rather than to mail them. Some districts in Alabama may ask parents to sign that they received their Rights, but it is not a requirement.

3. What is the difference between a state complaint and an impartial due process hearing?

   The state complaint process involves a signed written complaint that is sent to the State Superintendent of Education, Attention: Special Education Services. When a formal complaint is filed, the ALSDE investigates the observed/suspected violations of the IDEA requirements that may have occurred and renders a decision. A specialist is assigned as complaint contact for each complaint filed.

   A due process complaint is a formal complaint that initiates litigation in the form of a due process hearing. Typically, a request for due process hearing is filed when the parent is represented by an attorney. It is submitted in writing to the ALSDE and a hearing officer is appointed to preside over the hearing. If the matter is not resolved prior to a hearing, the hearing officer will hear evidence and
make a decision regarding the issues in the due process complaint. Most requests for due process are settled prior to a hearing, but some actually go through the entire hearing process.

4. **Will the ALSDE accept a due process hearing request over the telephone?**

No. The request must be in writing and signed and, therefore, will not be accepted or handled over the telephone. For information on the provisions applicable to filing a due process hearing, parents may write to the Alabama State Department of Education, Attention: Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101, or use a toll-free line 1 (800) 392-8020. Individuals in the Montgomery area may call (334) 242-8114. Individuals may also access the AAC for information related to due process by visiting the ALSDE Web site at www.alsde.edu.

5. **What about a request for mediation? Will that be accepted over the telephone?**

Yes. A request for mediation can be made to the Alabama State Department of Education (ALSDE) by telephone and if both parties agree to the mediation, a mediator will be appointed to assist in resolving the dispute informally.

### III. THE SPECIAL EDUCATION PROCESS – CHILD FIND, EVALUATION, AND ELIGIBILITY

#### A. Process Overview Questions

1. **What does the special education process entail?**

The special education process begins with a referral for special education consideration. The IEP Team, including the parent, reviews the referral and determines if the child will be evaluated. If the referral is accepted, a comprehensive evaluation is completed by the school district, and eligibility is determined by an IEP Team/Eligibility Committee using the criteria outlined in the AAC. If a student is found eligible and is identified as a student with a disability, the team will develop an IEP and the school will implement the plan/program.

For specific instructions and details applicable to the overall special education process and compliance, school administrators and other school personnel should refer to the ALSDE’s detailed *Mastering the Maze* publication. It is vital that school personnel adhere to the processes set forth in *Mastering the Maze*, and school principals should urge all school personnel to refer to this important resource.
2. May students be placed in special education without following the evaluation, eligibility, and placement procedures?

No.

B. Questions Regarding the Referral Process, Child Find, the PST and RtI

1. Do school personnel have a legal duty to refer a student for special education consideration?

Yes. This is known as IDEA’s “Child Find” requirement. Child Find also applies to students with disabilities who attend private schools, including children attending religious schools, within the school district’s jurisdiction, highly mobile students with disabilities (such as migrant students), homeless students, and students who are wards of the state.

2. When does the child find duty kick in?

The law requires that a student be referred for an evaluation for special education if there is sufficient reason to suspect or reason to believe that a student is a student with a disability in need of special education services.

3. Does a student have to actually fail a grade (with or without accommodations) prior to being referred for an evaluation for special education services? Is this a school district decision?

No. The Child Find requirement applies to students who are suspected of having a disability and in need of special education, even though they have not failed, been retained in a course or grade, or are advancing from grade to grade. It does not take failing grades to trigger the Child Find duty under the IDEA, and this is not a school district decision.

4. So, what constitutes “reason to suspect” or “reason to believe” that triggers the child find requirement?

Based upon applicable court decisions, there are a number of “referral red flags,” such as extensive absences or failing grades, that have been found, in combination, sufficient to constitute a “reason to suspect a disability and need for services” that would trigger the Child Find/evaluation duty under the law. Remember, however, that not one of these “red flags” alone would typically be sufficient to trigger the Child Find duty, but the more of them that exist in a particular situation, the more likely it is that the duty would be triggered.
a. **Academic Concerns in School**
- Failing or noticeably declining grades
- Poor or noticeably declining progress on standardized assessments
- Student negatively “stands out” from his/her same-age peers
- Student has been in the Problem Solving/RtI process and data indicate little progress or positive response to interventions
- Student is on a 504 Plan and accommodations have provided little benefit

b. **Behavioral Concerns in School**
- Numerous or increasing disciplinary referrals for violations of the code of conduct
- Signs of depression, withdrawal, inattention
- Truancy problems or increased unexcused absences
- Student negatively stands out from his/her same-age peers
- Student has been in the Problem Solving/RtI process and data indicate little progress or positive response to behavioral interventions, such as a behavior intervention plan, etc.
- Student is on a 504 Plan and accommodations have provided little benefit

c. **Outside Information**
- Information that the student has been hospitalized for an extended period of time
- Information that the student has received a medical or DSM-IV diagnosis (ADHD, ODD, OCD, etc.)
- Information that the student is taking medication
- Information that the student is seeing an outside counselor, therapist, physician, etc.
- Private evaluator suggests the need for an evaluation or services

d. **Personnel/Parent Request**
- Teacher/other service provider suggests an evaluation is needed
- Parent requests an evaluation

5. **Do we wait for parents to make a referral?**

No. While the parent may initiate a request for the initial evaluation, the Child Find duty may be triggered prior to that time. When there is sufficient suspicion, a referral must be made whether the parent has requested it or not.
6. **Must an IEP/Referral Team accept a referral from a parent(s) if there is no clear evidence of a problem or “reason to suspect?”**

Yes. The school district must accept a referral from a parent whenever one is submitted. Once submitted, an IEP Team meeting is then scheduled to discuss the referral. The parent is a member of the IEP Team and must be invited to participate in this meeting. The IEP Team reviews the referral and existing data and determines if there is a need for an evaluation.

7. **If a parent requests an evaluation, is the LEA required to evaluate?**

No. LEAs are only required to accept referrals from parents. The IEP Team will meet to review the referral and determine if the collected student data indicates a need for an evaluation.

8. **What happens if the IEP Team determines that the student referral does not warrant an evaluation?**

If the IEP Team determines that the student does not need an evaluation for special education services because there is no reason to suspect that the student is a student with a disability in need of services, the “Notice of Intent Regarding Special Education Services” must be used to document the IEP Team’s decision not to accept the referral for evaluation and be given to the parent or adult student (age 19 and older), along with a copy of the “Special Education Rights,” so that the parent is advised of the school’s decision and their right to challenge the decision.

9. **When does a referral become “official?”**

The referral becomes “official” on the date it is received by the LEA, whether it is by phone, mail, e-mail, conference, or when a written referral form is submitted to any education personnel (e.g., secretary, guidance counselor, principal).

10. **Can IEP Teams stop accepting referrals for special education in the spring if there is not enough time to begin services before the summer break?**

No. A referral must be accepted anytime there is sufficient “reason to suspect” a disability exists, no matter when that occurs during the school year. Limitations cannot be put in place that restrict when a referral can be accepted for special education consideration, even during the summer break.
11. **May an IEP Team stop accepting referrals if classes are full?**

   No. Appropriate referrals must be acted upon regardless of class loads and capacity. There is no such thing as a “waiting list” for referrals or for services.

12. **What is a “Problem Solving Team” and how does it relate to identification or the Child Find duty under the law?**

   The Problem Solving Team (PST) is the collaborative group of school-based personnel that help identify and guide general education interventions for all students who have academic or behavioral difficulties and is central to the school’s successful implementation of an RtI framework. The PST is responsible for day-to-day decisions which ensure that (1) students receive instruction and interventions matched to their identified needs, (2) appropriate progress monitoring tools are utilized to provide evidence of students’ response to instruction and intervention, and (3) progress monitoring data are used to make timely instructional decisions that maximize student outcomes.

13. **Can the school deny a referral based on the fact that a student has not completed the PST/RtI process?**

   No. The PST may refer a student to the IEP Team for consideration for evaluation if relevant data indicate that there is a suspicion of a disability and a need for special education services. However, a parent should never be informed that the PST/RtI process must be completed before a referral can be made. The only reason to deny a referral is that there is no reason to suspect that the student has a disability or is in need of special education services.

14. **If a parent requests an evaluation, should PST intervention strategies and evaluations occur concurrently?**

   Yes. When a parent requests an evaluation and it is determined that an evaluation will be done, implementation of intervention strategies in the general education program should occur and continue simultaneously with the evaluation.

15. **Is the PST a part of special education or regular education?**

   The PST process is designed for all teachers and students, both general education and special education. Any teacher who has a student that is experiencing learning or behavioral difficulties should refer the student to the PST for assistance.
16. **Is the Problem Solving Team the same as the IEP Team?**

No. The PST is not to be confused with the IEP Team. The focus of the IEP Team is on the provision of services to an identified student with a disability. The PST, while focused on the student as well, has as its primary purpose the provision of support to teachers in an attempt to assist them in the development of strategies to improve student achievement.

The typical PST make-up includes the following:

- Classroom Teachers
- Intervention Teachers
- Instructional Coaches (reading, math, literacy, graduation, etc.)
- Special Education Teachers
- School Counselor/School Psychologist
- Administrator (principal or assistant principal)

17. **What is Response to Instruction/Intervention (RtI)?**

RtI integrates core instruction, assessment, and intervention within a multi-tiered system designed to maximize student achievement and reduce behavior problems. Through implementation of an RtI process, schools identify and monitor students at risk, use problem-solving and data-based decision-making to provide research-based interventions, and adjust the intensity of interventions based on the student’s response. Response to Instruction done well at the classroom level will provide data from which educators can make sound instructional decisions for individuals and groups of students. Given high-quality decisions, RtI shows promise in supporting all students, especially those at risk of failing to achieve state performance standards.

18. **Under RtI, how/when do we determine that regular education can no longer sustain the services/interventions required for the student?**

While there is no legal answer to this question, the school district will decide this within the design of its RtI model, as well as other such timelines and procedures. Remember, however, that the legal Child Find duty is still triggered based upon “reason to suspect” that a disability and possible need for special education services exists.

19. **We are a “Response to Intervention” school. What do we do when parents demand that their child be tested even though the student is responding to the interventions?**

If the RtI data reflect that the student is responding well and the school has no reason to believe or suspect that the student is in need of special
education or related services, the school can refuse to conduct the evaluation requested on that basis. As described in Question 8 of this section, formal written notice of this refusal must be provided to the parent (and contain all of the legally-required components), including notice of the parent’s right to challenge the school’s refusal to conduct an evaluation via mediation or due process.

20. **What type of RtI documentation is required before a student can be referred for a special education evaluation?**

Remember that the Child Find duty to refer is triggered upon a reason to suspect or to believe that the student is a student with a disability, regardless of RtI documentation that may be available. Within an RtI model, prior to, or as a part of, the referral process, documentation must be generated that reflects that the student was provided appropriate instruction in regular education settings that was delivered by qualified personnel. In addition, data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, must be provided to the student’s parents. Before a student is referred by the school for a special education evaluation or concurrently during the evaluation process, intervention strategies must be implemented in the general education program and monitored by the Problem Solving Team (PST) for an appropriate period of time (typically, a minimum of eight weeks) and be determined to have been unsuccessful.

21. **What is the legal standard for selecting and documenting research-based/supported interventions for students suspected of having a learning disability or emotional/behavior disability?**

Unfortunately, there is no legal standard in this regard. The PST/RtI team must be sure, however, that there is sufficient research to support the validity of interventions that are used in the RtI process.

C. **Questions Regarding the Evaluation Process**

1. **If the IEP Team determines that an evaluation is needed, is it required to get consent from the parent(s) to evaluate?**

Yes. The “Notice and Consent for Initial Evaluation” form must be signed by the parent(s) before any evaluations are conducted.
2. **How long does the LEA have to conduct an evaluation if it is decided that one is needed and the parent consents?**

Once the parent signs consent for an evaluation, the LEA has 60 calendar days from the date the signed consent is received to complete an initial evaluation. Day 1 of the timeline is the day the LEA receives a signed “Notice and Consent for Initial Evaluation” form from the parent. The initial evaluation must be completed on or before Day 60. Once the evaluation is completed, the LEA has 30 calendar days to determine initial eligibility and another 30 calendar days from the eligibility determination date to develop an IEP.

3. **If a student fails the vision and/or hearing screening and we exhaust all avenues to get it corrected but cannot do so, may we proceed with evaluations if it is going to go over the 60-day timeline?**

No. The vision or hearing problem must be corrected prior to proceeding with evaluations that rely on visual or auditory acuity.

4. **Is the school district responsible for purchasing eyewear to correct vision problems prior to continuing testing for eligibility if the parent/guardian has not taken action to correct vision problems?**

Yes, if it is absolutely necessary to proceed with a valid evaluation. The school district, however, may also call upon nonprofit or other organizations that may help a student in need of eyewear whose parents cannot afford it.

5. **Who is responsible for transporting the student to and from the eye care professional?**

The school district is responsible if the parent does not agree to assist.

6. **How should we proceed when parents refuse consent for an initial evaluation that we believe is necessary?**

The LEA must make and document its “reasonable efforts” to obtain informed consent from the parent for an initial evaluation. However, if the parent fails to consent or to respond to a request for consent to an evaluation, the school district may, but is not required to, pursue the initial evaluation by using the due process procedures under the IDEA. Most of the time, a school district will simply document a parent’s refusal to consent to the evaluation and maintain that in the student’s file, rather than to initiate a formal proceeding to attempt to override the parent’s refusal to consent to the evaluation. If the school district does not choose to pursue a proceeding to override parent refusal to consent to an evaluation, the
school district will not be held to be in violation of the IDEA’s Child Find or evaluation requirements.

7. **If a particular evaluation has recently been conducted, for what time period would that evaluation be considered valid for us to use for eligibility purposes?**

Any evaluation is considered valid for determining initial eligibility for special education services if that evaluation is conducted within one year of the date of the IEP Team meeting to discuss the need for additional data, if any, to determine eligibility. If the initial evaluation is for an out-of-state student who is transferring into Alabama, the public agency may use the evaluations at their own discretion.

**D. Questions about Reevaluation**

1. **Isn’t it true that we only have to reevaluate a student every three years?**

   While it is true that a reevaluation meeting must be held every three years to determine whether a reassessment is necessary, a reevaluation may be needed “whenever conditions warrant.” Thus, the need to conduct a reevaluation is an IEP Team decision depending upon the needs of the student. If a student is not making progress, an IEP Team should always consider the need for obtaining additional evaluative information.

2. **May we determine that a student is no longer eligible if we choose to collect no new data, or must we administer formal assessments?**

   A student may be determined ineligible for services even if a school district chooses not to collect new data as part of a reevaluation. This determination may be based on existing data (such as report cards, work samples, teacher input, state assessments, etc.). A new eligibility report that includes all of the minimum evaluative criteria must be generated, but this does not mean just transferring the information from the previous eligibility report to a new report. Current data must be on the eligibility report to support the decision at that time to dismiss the student from special education services based upon the fact that the student is no longer eligible.

3. **How many three year reevaluations may lapse without getting new testing?**

   The need to conduct assessments and to obtain additional data as part of reevaluation is an IEP Team decision. However, the IEP Team must be
able to justify and defend its decision not to conduct any new assessments as part of its reevaluations of a particular student.

It is important to remember that when the eligibility criteria in the AAC change, the student must meet the new AAC criteria at the time of reevaluation. Thus, when the minimum evaluative criteria in the AAC are revised, most students will need additional evaluative data in order to meet the new criteria.

4. **In terms of a reevaluation, what responsibility does a school have if the parent will not attend meetings, give permission for a reevaluation, or provide needed input for social histories or behavior scales?**

In essence, a parent is refusing to allow for the district to conduct a reevaluation under these circumstances. The U.S. Department of Education has indicated that where a parent refuses consent for reevaluation and the school district believes that based on existing data the student does not continue to have a disability or does not continue to need special education and related services, the school district may determine that it will not continue to provide special education and related services. If this is decided, the school district must provide prior written notice of its proposal to discontinue the provision of FAPE based upon the fact that it does not have evaluative data in place that supports continued eligibility.

5. **What constitutes a reevaluation for a student before determining that a student is no longer a student with a disability?**

A reevaluation begins with the IEP Team reviewing the student’s educational records (all relevant data) and deciding whether additional evaluative data are necessary to determine a student’s continued eligibility for special education and related services. The IEP Team should review all existing data, including work samples, observations, attendance, and other measures of student performance already available in the record. Parental consent is not needed to review the educational records. The IEP Team may decide that no additional evaluative data are needed to make a determination, or it may decide that additional evaluative data must be obtained in order to determine continued eligibility. In the latter case, parental consent is required prior to conducting evaluations or documentation of at least two attempts if the parent fails to respond to the request for reevaluation.
E. Questions about Independent Educational Evaluations (IEEs)

1. If a parent disagrees with the school district’s evaluation and requests an IEE, does the parent get to choose who conducts this evaluation?

When a parent disagrees with an evaluation conducted by the school district, the parent has the right to request that the district fund an IEE. An IEE must be conducted by a qualified examiner who is not employed by the school district.

If a parent requests an IEE, the school district must either file a due process hearing request to show that its evaluation is appropriate or ensure that the independent evaluation is provided at public expense unless the school district can demonstrate in a due process hearing that its own evaluation is appropriate or that the evaluation obtained by the parent did not meet agency criteria. If the final decision in a due process hearing is that the school district’s evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

Unfortunately, the law does not specifically set forth whether the parent gets to choose who actually conducts an IEE. However, the U.S. Department of Education has indicated that school districts must maintain a list of independent evaluators from which parents may choose, but the list needs to be comprehensive and inclusive of all qualified examiners in the area.

2. If an IEE is conducted or a parent brings in a private evaluation report, must the LEA consider it?

Yes. The LEA must consider the results of any independent educational evaluation in any decisions made with respect to the student’s right to FAPE. However, the LEA is not required to implement all of the recommendations contained in an independent evaluation report, particularly if the school does not agree with those recommendations.

F. Eligibility Questions

1. Must an LEA find a student eligible for services based on letters or other documentation from a doctor?

While documentation from a doctor may contain valuable and relevant information, a doctor does not determine eligibility for special education services. Rather, the school district must conduct the evaluations required by the AAC, and the student must meet the criteria in the AAC to be eligible for special education services. Doctors make medical diagnoses, not educational diagnoses. A medical diagnosis alone does not
automatically constitute eligibility for special education services. The IEP Team will make decisions regarding eligibility.

2. **When the IEP Team/Eligibility Committee is convened to determine eligibility, must the IEP Team/Eligibility Committee reach a consensus regarding eligibility?**

A unanimous IEP Team decision is not required to determine the eligibility of a student, but obtaining “consensus” of the IEP Team/Eligibility Committee must be attempted. The eligibility decision page provides areas for signatures of agreement or disagreement with the eligibility decision. At the end of the process, however, LEA personnel must ultimately decide what the determination will be from the LEA’s perspective and provide written notice of the determination to the parent(s).

3. **Why are certain students denied special education services because they don’t meet the “paper” criteria for special education?**

Eligibility criteria are important and must be followed. Congress and the U.S. Department of Education are clear that students must meet eligibility criteria as defined by the state in order to be eligible to receive services.

4. **Does Alabama use the severe discrepancy model exclusively to determine SLD? Are any LEAs in Alabama using the RtI model for eligibility?**

In Alabama, LEAs may use any or all of the three options to determine eligibility for specific learning disability. These options are: RtI, Pattern of Strengths and Weaknesses, and Severe Discrepancy. Severe Discrepancy is still the most frequently used option for identification of a specific learning disability in Alabama. However, the two other options are used by Alabama LEAs.

**IV. THE IEP PROCESS/PROCEDURES AND CONTENT**

A. **General IEP Process Questions**

1. **How can I get parents to attend IEP Team meetings?**

Legally, it is required that an LEA “take reasonable steps” to ensure that one or both parents are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying them (via sending a “Notice of Proposed Meeting Consent for Agency Participation” form) early enough to ensure that they will have an opportunity to respond and
attend. In addition, the meeting must be scheduled at a mutually agreed upon time and place.

There is no legal avenue that a LEA can pursue to force parents to attend IEP Team meetings. The LEA will be in compliance as long as the LEA takes steps and documents actions as noted in the answer to the next question.

2. **What action should the LEA take if the parent(s) fails to respond to the “Notice of Proposed Meeting Consent for Agency Participation?”**

If the parent or adult student (age 19 and older) does not respond to two attempts (first and second notice), the LEA may proceed and conduct the meeting. The LEA must maintain documentation of two attempts and these attempts may be at least one of the following:

a. Records of phone calls made or attempted and the results of the calls.
b. Copies of correspondence, including the “Notice of Proposed Meeting/Consent for Agency Participation” form sent to the parent(s).
c. Records of visits made to the parent(s) home or place of employment and the results of those visits.

The LEA should also seek input from the parent prior to the meeting, as well as offer to the parents the availability to participate in the IEP Team meeting via conference calls or other alternative formats.

3. **May an IEP Team meeting occur without the parent(s)?**

Yes. Even if the parent checks that he or she will meet as scheduled but does not show up, the IEP Team meeting may be held as scheduled with the other required IEP Team members. However, only the topics checked on the “Notice of Proposed Meeting/Consent for Agency Participation” form may be discussed at such meeting.

4. **What level of accommodation is necessary in terms of scheduling IEP Team meetings convenient for parents? Must the LEA schedule an IEP Team meeting on an evening or weekend at parental request?**

Unfortunately, the law does not specifically articulate what is an appropriate “mutually agreed upon” time and place for IEP Team meetings. The applicable authority indicates that LEAs must make “a good faith effort” to reach an agreement with the parents regarding the scheduling of IEP Team meetings, but the law does not preclude the LEA
from considering its own scheduling needs. Clearly, scheduling meetings in the evening, after school hours, or over the weekend is not required.

5. **How much advance notice must be given when inviting parent(s) to attend an IEP meeting?**

There is no specified length of time, although individual LEAs may have their own timeframe for providing notices of meetings (typically five to seven school days). However, the notice should be sent early enough so that adequate time is allowed and scheduling adjustments can be made if necessary.

6. **Must the LEA provide a copy of the IEP to the parent(s)?**

Yes. A copy of the IEP must be provided to the parent(s).

7. **Can a parent record an IEP Team meeting?**

On occasion, a parent may request that an IEP Team meeting be tape recorded or videotaped. Generally, if the parent can show a true need for doing so in order to participate meaningfully during the meeting, courts have allowed taping, even over the objection of a teacher. If a parent truly needs to record the meeting for participation purposes, it may simply be best to allow the recording. However, the LEA should record the meeting as well and keep a copy of the tape as an “education record.”

**B. IEP Team Questions**

1. **What is an IEP Team?**

The IEP Team is a group comprised of the parent and qualified school staff members who make all decisions regarding the identification, evaluation, and placement for a student with a disability.

2. **What is the function of the IEP Team?**

The IEP Team is responsible for reviewing all available assessment data, determining eligibility, developing the IEP, and determining appropriate placement for the student.

3. **Who are the required members of a student’s IEP Team?**

Under the IDEA, the LEA shall ensure that the IEP Team for each student with a disability includes: (1) the parents of the student; (2) not less than one regular education teacher of the student (if the student is, or may be,
participating in the regular education environment); (3) not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student; (4) a representative of the LEA who (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; (ii) is knowledgeable about the general curriculum; and (iii) is knowledgeable about the availability of resources of the school district; (5) an individual who can interpret the instructional implications of evaluation results and who may be a member of the team already described; (6) other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate at the discretion of the parent or the agency; and (7) the student.

The school is required to ensure that members (2) through (5) above are present at every IEP Team meeting and that parents are properly invited to attend. At meetings where transition services will be addressed for the student (typically beginning at age 16), other agencies involved in providing transition services are required to be invited to attend (with parental consent) as well as the student.

4. Are all IEP Team members required to attend every IEP Team meeting? Do they all have to stay for the entire meeting?

In general, yes. In 2004, however, the IDEA formalized a process by which a member of the IEP Team could be excused from attending an IEP Team meeting or part of an IEP meeting. A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent of the student at issue and the school agree that the attendance of that member is not necessary “because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.” When the meeting involves a modification to, or discussion of, the member’s area of the curriculum or related services, the member may be excused if the parent and LEA consent to the excusal and the member submits in writing to the parent and the IEP Team input into the development of the IEP prior to the meeting. Parental agreement or consent to any excusal must be in writing.

The 2006 IDEA regulations clarified the “IEP Team members” to whom the excusal procedures apply. The regulations clarified that the excusal procedures in the Act refer to the IEP Team members (2) through (5) listed in the answer to Question 3 above. If the staff members that cannot attend include any of these IEP Team members, then a formal excusal procedure must be followed for each one who cannot attend. If certain staff members do not plan to attend but the vital members of the student’s IEP Team will be there, then the excusal procedures are not required.
Because these procedures can be so complicated, most districts will not proceed with a meeting unless all IEP Team members are present. However, there may be times (due to an emergency) where the district will need to get the parent’s consent to proceed without a mandatory IEP Team member.

5. **Who should sign an IEP?**

Although no one is actually required by law to sign an IEP, it is prudent practice to have members sign to reflect who was present and who participated for compliance purposes. Thus, only those individuals present at the IEP Team meeting should sign the IEP. If one of the IEP Team members participates by telephone, the name of that person should be placed on the appropriate line and a notation made stating that he/she participated by telephone. Unless you were present and participated at the IEP Team meeting, you should not sign the IEP.

6. **Who is authorized to serve as the LEA representative of the school at an IEP Team meeting?**

It is important that whoever is designated to serve as the local education agency representative (LEA representative) at an IEP meeting be qualified to serve in that position. Remember that the LEA representative must meet the following criteria and be: (i) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; (ii) is knowledgeable about the general education curriculum; and (iii) is knowledgeable about the availability of resources of the LEA. In Alabama, the LEA representative must also be able to commit resources on behalf of the LEA.

Whoever is chosen to serve as the LEA representative at an IEP meeting should be clearly aware of his/her role and be prepared to meet the criteria for serving as the LEA representative.

7. **Which teacher should attend the IEP Team meeting when the student has more than one teacher?**

With respect to “not less than one special education teacher of the student,” this must be a teacher who provides (or has provided) special education services to the student and not just someone with special education certification.

With respect to “not less than one regular education teacher of the student,” if the student has several regular education teachers, the law is clear that “not less than one” regular education teacher of the student is required to attend (if the student is, or may be, participating in the regular
education environment). This means that not all of a student’s regular education teachers must be there and that the requirement is satisfied with one of the student’s regular education teachers in attendance.

With respect to which regular education teacher should attend if the student has more than one regular education teacher, it is important to consider language from the U.S. Department of Education (U.S. DOE) indicating that the regular education teacher who serves as a member of a student’s IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the student. If the student has more than one regular education teacher responsible for carrying out a portion of the IEP, the school may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interests of the student.

8. What if a general education teacher cannot or will not attend the IEP meeting?

If no general education teacher of the student can or will attend, then the formal excusal procedures must be followed before the meeting proceeds. Not having a general education teacher at the meeting has been held sufficient, in and of itself, to constitute a denial of FAPE. Principals must impress upon general education teachers the importance of compliance with the requirement that they attend and participate in IEP Team meetings.

9. Why is there a requirement that a general education teacher participate as a member of the IEP Team if a student is not participating in the general education environment?

A general education teacher must participate as a member of the IEP Team to discuss what and how the general education curriculum may be accessed by the student and how the student will be involved in the general education curriculum during that IEP implementation year. The general education teacher may also assist in the determination of appropriate positive behavioral interventions and supports, the determination of supplementary aids and services, program modifications, and supports for school personnel.

10. May the parent(s) bring other individuals with them to the IEP Team meeting?

Yes. The parent or the LEA may invite any individuals who have knowledge or special expertise regarding the student to the IEP Team meeting. According to the U.S. DOE, the determination as to whether an
individual has “knowledge or special expertise” is to be made by the parent or LEA that invited the individual to participate.

11. Are LEAs and parents allowed to be represented by attorneys at IEP Team meetings?

The U.S. DOE has addressed this question and responded that the IDEA authorizes the addition of other individuals to the IEP Team at the discretion of the parent or the LEA only if those other individuals have knowledge or special expertise regarding the student. The determination of whether an attorney possesses knowledge or special expertise regarding the student would have to be made on a case-by-case basis by the parent or school inviting the attorney to be a member of the team. The U.S. DOE noted that the presence of attorneys could contribute to a “potentially adversarial atmosphere at the meeting” even if the attorney possessed knowledge or special expertise regarding the student. Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged. However, if the parent brings an attorney to an IEP Team meeting then the school should strongly consider whether it should have its attorney present and adjourn the meeting and reschedule it, if necessary, so that the school’s attorney may attend.

12. Can representatives of the Alabama Education Association (AEA) or other teacher organizations attend IEP Team meetings at the request of a teacher or other LEA personnel?

The U.S. DOE has stated that the IDEA does not provide guidance for including individuals such as representatives of teacher organizations as part of an IEP team unless they are included because of knowledge or special expertise regarding the child. Because a representative of a teacher organization would generally be concerned with the interests of the teacher rather than the interests of the child and generally would not possess knowledge or expertise about the child, it generally would be inappropriate for such an official to be a member of the IEP Team or to otherwise participate in an IEP Team meeting.

C. IEP Content Questions

1. How long should an IEP be?

The law does not specify how long an IEP must be, but does specify the required components of an IEP. Because Alabama has a state form that must be used by IEP Teams, the components are driven by the form. However, this does not provide guidance in terms of how long an IEP will be for a particular student. Each IEP Team must determine what is appropriate for each student with a disability.
2. **Must the IEP describe how a student’s progress will be measured?**

Yes. The IDEA regulations require the IEP to include “a description of how the student’s progress toward meeting the annual goals [in the IEP] will be measured” and “when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.” It is very important that the student’s progress is measured in accordance with the provisions in the IEP.

3. **If a student is eligible for more than one service, can all services be discussed at the same IEP Team meeting?**

Yes. In addition, each service should be addressed/discussed specifically during the IEP Team meeting and clearly set out in the IEP.

4. **Is it appropriate to make categorical decisions about what services will be provided to students with disabilities?**

No. Each student’s IEP and services must be determined on an *individual basis* at least annually. At this time, a statement of the specific special education and related services to be provided to the student and the extent to which the student will be able to participate in the general education setting are to be included in the student’s IEP. Blanket statements such as “we always do it that way” or “this is what we provide for all of our students with autism” must be avoided.

5. **How can state assessment data be useful in writing standards-based IEPs?**

State assessments are designed to measure progress toward academic content standards. Therefore, results from state assessments can be used to identify concerns to be addressed when developing a standards-based IEP.

6. **How many goals do we need to write for each student who is assessed on the Alabama Alternate Assessment (AAA) in a subject area and how many subject areas must have goals addressed in the IEP?**

IEP goals are required in all five core content areas for students working toward Alabama Extended Standards in kindergarten through twelfth grade. The five core content areas are: (1) reading, (2) mathematics, (3) science, (4) social studies, and (5) language arts. The Alabama Extended Standards for reading, mathematics and science are used to develop goals for the first three content areas. For social studies and language arts, the IEP Team should use the Alabama Courses of Study for the student’s
grade of enrollment and develop goals based on the content, but at a lower level of complexity.

After twelfth grade, if students stay in school to age 21, the IEP Team determines the reading and mathematics content that can be used to address the student’s transition from high school to adult life. This selected reading and mathematics content may be from the extended standards or content not included in the extended standards. The IEP Team addresses reading and mathematics content in the context of preparing the student for post-school outcomes such as adult life, work, and/or independent living.

The number of goals for all students, including those working toward Alabama Extended Standards, should be based on individual need. It is problematic when there is an entire class, school, and/or LEA where all students have only one (1) goal per subject. This type of trend in the number of goals is an indication that students may not be receiving individualized programs as required by the IDEA. Teachers may choose to write one goal for each extended standard in reading, mathematics and science, although that is not required by the Alabama State Department of Education. An appropriate approach would be to prioritize the extended standards that will be used for writing goals by evaluating the student’s present level of performance and identifying the standards that will take the most effort and time to teach. For example, if there are five extended standards for a certain subject/grade, an IEP Team may choose two or three standards where the student needs the most instruction to master to be addressed through goals.

7 Are IEP goals to be written for the actual grade placement of a student or should they be written based upon the actual grade level in which the student is functioning currently?

It depends on whether the student is working toward the Alabama Courses of Study Standards or Alabama Extended Standards.

Students Working Toward Alabama Extended Standards:
Goals based on extended standards in the areas of reading, mathematics, and science must be based on the extended standards for the student’s grade level of enrollment.

There is some grade-level flexibility when developing academic goals for students with significant cognitive disabilities for social studies and English/language arts. The goals for these areas are based on the Alabama Courses of Study standards because Alabama does not have extended standards for social studies or English/language arts. For these academic areas the IEP Team should use the format from the extended standards to
develop IEP goals. This involves looking at the course of study for the student’s grade of enrollment, or one or two years back, and developing goal(s) related to the content, but at a much lower complexity than what is presented in the general education course of study.

**Students Working Toward Alabama Courses of Study Standards:**
The ALSDE recommends IEP Teams start with the student’s grade level of enrollment and consider the standards from the grade level of enrollment and standards from one or two grades back.

Simultaneous to considering the standards for the grade level and one or two grades back, it is strongly suggested that the LEA offer reading and/or mathematics intervention programs for students who are substantially behind grade level.

IEP Teams must also keep in mind there are other considerations for high school students who are trying to earn credit toward the Alabama High School Diploma or the Alabama Occupational Diploma. Goals for high school students can be written using standards from lower grade levels, but the student must be taught and tested on the grade-level standards in order to earn course credit.

8. **What are the benefits of extended standards versus general standards?**

The Alabama Extended Standards are for students with significant cognitive disabilities.

Federal law requires that students with disabilities be provided access to the general education curriculum. The law allows for students with significant cognitive disabilities to access the general education curriculum by being taught and tested on alternate achievement standards that link to state academic content standards. In Alabama, these standards are called Extended Standards. The Alabama Extended Standards for Reading, Mathematics, and Science are extensions of the state academic content standards for each grade level and are based on the academic content standards found in the Alabama Courses of Study. They are designed to allow students with significant cognitive disabilities to progress toward state standards while beginning at each student’s present level of performance. As required by law, the Alabama Extended Standards are clearly related to the grade-level content, but are reduced in scope and complexity.

As a general rule, a student with an IQ of 55 or below would be considered a student with a significant cognitive disability. In some situations, IEP Teams may determine extended standards are appropriate
for a student with an IQ a few points higher than 55 or the regular standards are appropriate for students with an IQ a few points lower than 55. The decision should always be based on student need and what is appropriate for the individual student.

V. PLACEMENT AND PARENT CONSENT QUESTIONS

1. Can the LEA provide special education before an IEP has been formulated?

No. In 1999, the U.S. DOE specifically stated that an IEP must be in effect before special education and related services are provided to an eligible student and that the appropriate placement for a particular student with a disability cannot be determined until after decisions have been made about the student’s needs and the services that the LEA will provide to meet those needs. These decisions must be made at the IEP Team meeting, and it would not be permissible to first place the student and then to develop the IEP.

Thus, according to the law, an IEP must be developed before special education services may be delivered, and the student’s placement must be based upon, among other factors, the student’s IEP. In addition, courts have considered “predetermination of placement” to be fatal to the LEA’s position and a denial of FAPE, in and of itself.

2. What does it mean to require IEP decisions to be made by “consensus? Should a placement decision be made if the parents oppose it? What happens if the parents do not agree with the LEA’s proposed IEP?

Technically, “consensus” means unanimity. Though reaching unanimity in decision-making is an admirable goal, it may not always be possible. The U.S. DOE has addressed this issue and stated that an IEP meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint, informed decisions regarding the (1) student’s needs and appropriate goals; (2) extent to which the student will be involved in the general curriculum and participate in the regular education environment and state and district-wide assessments; and (3) services needed to support that involvement and participation and to achieve agreed-upon goals. The U.S. DOE noted that parents are considered “equal partners” with LEA staff in making these decisions, and the IEP Team must consider the parents’ concerns and the information that they provide regarding their student in developing, reviewing, and revising IEPs.

While the IEP Team should work toward reaching consensus, the LEA has the ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority “vote.” The fact that the parents brought more people to the
meeting is not determinative of its outcome. Nor does the principal get to “stack the deck” and mandate that a vote occur at an IEP meeting.

If the IEP Team cannot reach consensus, the LEA must provide the parents with prior written notice of the agency’s proposals or refusals, or both (using the “Notice of Intent Regarding Special Education Services” form), regarding the student’s educational program, and the parents have the right to seek resolution of any disagreements by initiating mediation or an impartial due process hearing to challenge the proposal or refusal.

3. **Can a parent dictate what is to be included in the IEP? Do all IEP Team members have to agree upon the services?**

Again, while the parent must be afforded a meaningful opportunity to participate in the development of an IEP, the parent is only one member of the IEP Team. The parent may offer suggestions and provide information that must be considered by the entire IEP Team in developing an appropriate IEP. It is not required, however, that all members of the IEP agree with the proposed services that are written in the IEP or that all of a parent’s demands be incorporated.

4. **What if the LEA staff does not agree among themselves on the services to be provided?**

When there is disagreement among LEA staff as to what the LEA’s final IEP recommendation/proposal will be, at least one court has looked to the LEA representative as the final authority for the LEA when the IEP Team was in disagreement as to the student’s placement. Someone will need to make the decision as to what proposal the school district believes it can support and defend.

5. **Do parents have the right to decline special education services for their child?**

Yes. School districts must obtain “informed parental consent” prior to the initial provision of services by providing them with a “Notice and Consent for the Provision of Services” form to indicate their written consent to services. If the parent refuses to provide consent to initial services or fails to respond to requests for it, the school district may not use the mediation or due process procedures to obtain agreement or a ruling that the services may be provided to the student. Thus, where a parent refuses consent to services, there is really nothing the school district can do other than to document its attempts to obtain consent. Clearly, however, the school district will not be in violation of the requirement to make FAPE available to the student where the parent has refused consent. In addition, the student will not be considered a student with a disability for disciplinary purposes or other considerations.
6. Why do we have to “chase down” parents to acquire signatures for referrals, consent for evaluation, and provision of services?

Obtaining signed parental consent for evaluations and the initial provision of special education services is a vital procedural requirement under IDEA and the AAC. Documentation is the key to showing compliance under the IDEA and to a school district’s ability to defend itself if challenged.

7. How should a school proceed when parents refuse to provide consent for the provision of special education services?

If the parent or adult student (age 19 and older) refuses consent for the provision of services, the school district may request that the parent or adult student participate in a conference to discuss his/her decision. However, if the parent or adult student does not give consent for services, the school district cannot provide those services and cannot request a due process hearing or mediation to seek to override parental refusal to consent to services. As a result, the LEA must do the best it can to provide appropriate services to the student short of special education services.

8. May an IEP be implemented without a parent’s signature?

Yes, if certain conditions have been met. If the parent(s) has been given an opportunity to participate in the meeting and this is documented (via the “Notice of Proposed Meeting/Consent for Agency Participation” form with two documented attempts) but cannot or will not attend, the IEP Team can meet and sign the IEP and it can be implemented, even if the parent did not sign the IEP. However, if the IEP is the initial placement for the student, parental consent must be provided for its implementation via the “Notice and Consent for the Provision of Special Education Services” form prior to initial placement in special education.

9. Once a parent has consented to the provision of special education services, does the parent have the right to demand later that the student be dismissed from special education?

Yes. In 2008, IDEA regulations were put into place that requires school districts to discontinue the provision of services if a parent revokes consent, in writing, to special education services personnel. However, as is discussed in the discipline section below, where the parent revokes consent to services, the student will not be considered to be a student with a disability for discipline or other purposes.
10. **What is the procedure for a parent(s) to request that special education services be discontinued for a student?**

If the parent makes the request to remove the student from special education, the LEA must obtain a signed “*Notice of Revocation of Consent for Continued Provision of Special Education and Related Services*” form and provide notice to the parent before ceasing services.

11. **As part of parent consent, do parents get to select the student’s special education teacher/case manager?**

No. The assignment of specific school personnel to implement an IEP is a school district decision. The parent does not get to dictate who will provide the services, and personnel selection is not an IEP Team decision.

## VI. LEAST RESTRICTIVE ENVIRONMENT/INCLUSION

1. **What is the meaning of least restrictive environment (LRE)?**

The IDEA requires states to establish procedures to ensure that, to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled and that special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This is called the Act’s LRE requirement.

2. **Is “full inclusion” of students with disabilities mandated by the IDEA?**

It depends upon what is meant by “full inclusion.” To the extent that “full inclusion” means that all students with disabilities must be placed in the regular education classroom, that would be inconsistent with the Act’s requirement that placement decisions be made on an individualized basis. Clearly, the LRE for a student is determined based upon the individual needs of the student.

3. **What factors should a school consider in making a placement decision? How do schools determine the LRE?**

The issue of LRE has been frequently litigated and many courts have established standards and factors for use in determining what the LRE is for a particular student. Factors to be considered include whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily for a given student. If it cannot and the school intends to provide special education or to remove the student from regular education, whether the school has mainstreamed the student to the maximum extent appropriate must be considered. The appropriate question is
what is the least restrictive environment where the student can receive meaningful educational benefit?

When determining the appropriate services and the LRE where they will be provided, the IEP Team must consider the range of service options beginning with collaborative/consultative services in the general education setting to the provision of homebound/hospital services. As each option on the continuum is considered, the IEP team discusses and decides if the option will allow the student to experience the LRE in the attainment of his/her educational goals and/or benchmarks set out in the IEP.

4. **Does a student with a disability have the right to placement in the neighborhood school?**

While there is a preference for every student with a disability to receive services in the school that he/she would attend if not disabled, the IDEA does not require that each school building in a school district be able to provide all the special education and related services for all types and severities of disabilities. Rather, the school district has an obligation to generally make available a full continuum of alternative placement options that maximize opportunities for its students with disabilities to be educated with nondisabled peers to the maximum extent appropriate. If a student’s IEP requires services that are not available at the school closest to the student’s home, the student may be placed in another school that can offer the services that are included in the IEP. Transportation, if needed for the student to benefit from special education, must be provided as a related service, at no cost to the parent, to the location where the IEP services will be provided.

Often, students who have low-incidence, high needs may need to be placed outside of their home-zoned school where the highly structured, intensive services that they need are located. Districts are not required to have such services in every one of its schools.

5. **Is inclusion in regular education classes the same as participation in the general curriculum?**

No. The U.S. DOE has noted that an IEP must address a student’s involvement in the general curriculum regardless of the nature and severity of the student’s disability. In addition, the IEP for each student with a disability (including students who are educated in separate classrooms or schools) must address how the student will be involved in and progress in the general curriculum.
6. Must a special education student fail in the LRE before moving to a more restrictive environment?

Not as a matter of law. In discussing the Act’s LRE requirements, the U.S. DOE has commented that “a student need not fail in the regular classroom before another placement can be considered. Conversely, IDEA does not require that a student demonstrate achievement of a specific performance level as a prerequisite for placement into a regular classroom.”

7. Can parents of regular education students legally challenge the inclusion of a disruptive special education student?

It has never been done, so it remains to be seen whether a parent of a regular education student would have any legal “standing” to bring an action to challenge the inclusion of a disruptive disabled student in the regular classroom.

8. What is our recourse in the event we have a very low-functioning student with a disability enroll in our school who has never been in the general education setting and is a total disruption to instruction, yet the LRE determination in the IEP dictates that all services be provided in the general education setting?

Convene the student’s IEP Team for the purpose of proposing an amendment to the IEP to address behavior and consider what the LRE is for the student. If it is determined that 100% in the general education setting with supplementary aids and services is not the LRE for the student, then a proposed change in placement would be made by the IEP Team.

9. Can we have more students in resource rooms for instruction as needed and decided by the IEP Team? We have guidelines for placing students in a self-contained multi-needs classroom and are “pushed” to place students with disabilities into the general education setting to the greatest extent possible. Shouldn’t there be a middle ground (resource room) in order to serve the needs of students with disabilities?

Students pursuing the Alabama High School Diploma or the Alabama Occupational Diploma must receive their core content instruction from a teacher deemed highly qualified (HQT) by the Alabama State Department of Education. Special education teachers or collaborative teachers may provide resource room instruction for students with disabilities for the purposes of, but not limited to, remediation and enrichment of content delivered in the general education classroom and they may provide such supportive instruction as organizational skills, note taking and test-taking skills, behavioral intervention, and other supportive instruction.

A continuum of services must be available to meet the needs of each student.
10. Why is it important for students with disabilities to have access to and be included in the general education curriculum with their non-disabled peers?

Access to the general education curriculum for students with disabilities is required by law. The IEPs of all students with disabilities must address the extent to which the student will be involved and progress in the general education curriculum. The goal is to include all students with disabilities in the regular education environment to the maximum extent appropriate for that student to receive FAPE. The LRE is an IEP Team decision that should be based on the individual needs of the student and take into consideration many relevant factors.

11. In order to meet the LRE mandate, are we required to have a general education preschool program in order to meet the requirement for preschoolers with disabilities or will our self-contained, multi-needs preschool class be sufficient?

Not necessarily, but the LRE mandate also applies to preschoolers with disabilities. The U.S. DOE has recently addressed this issue in a letter that may be accessed online at www.alsde.edu, Offices, Office of Learning Support, Special Education, Correspondence, Preschool LRE 2-29-12.pdf. The introductory sentence of the letter begins with “[t]he purpose of this letter is to reiterate that the least restrictive environment (LRE) requirements…of the Individuals with Disabilities Education Act (IDEA) apply to the placement of preschool students with disabilities.” In part, the letter states that the IDEA’s LRE requirement states a strong preference for educating students with disabilities in regular classes alongside their peers without disabilities. The term “regular class” includes a preschool setting with typically developing peers, and the IEP must include an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class. The letter also notes that for data collection purposes, the U.S. DOE defines a “Regular Early Childhood Program” as a program that includes a majority (at least 50%) of non-disabled students. The U.S. DOE also provides a description of some options that may be used to meet the LRE requirement for preschoolers with disabilities, even if the school district does not have preschool programs for non-disabled students.

It is also important to note that every state must report to the U.S. DOE information regarding the LRE for preschool students through Indicator 6 and as part of monitoring.

12. How do we provide “full inclusion, one-on-one paraprofessionals” with cuts in personnel that would provide for this service?

Matters of funding and establishing teaching and support positions are local decisions that are largely based upon state foundation allotments. However, the needs of students with disabilities must be met when an IEP Team determines LRE and supplementary aids and supports necessary for a student to attain the
goals developed in the IEP. Unfortunately, cost and lack of availability of services are not considered defenses to the failure to meet a student’s individual needs.

VII. MISCELLANEOUS SPECIAL EDUCATION SERVICE ISSUES

A. Related Services Questions

1. What are related services?

In addition to special education services, an IEP Team may decide that an individual student requires related services in order to benefit from special education. Related services may include, but are not limited to, audiology services, counseling services (including rehabilitation counseling services), early identification and assessment of disabilities in children, interpreting services, medical services (for diagnostic and evaluation purposes only), occupational therapy, parent counseling and training, physical therapy, psychological services, recreation (including therapeutic recreation), speech-language pathology, social work services in schools, school nurse services, school health services, and orientation and mobility services. Related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping of a cochlear implant), maintenance of the device, or the replacement of it.

2. Must related services be specified in the IEP?

Yes. If the IEP Team determines that a related service is necessary in order for the student to benefit from special education services, the school district must specify that in the IEP and provide the service directly, through its own resources, or indirectly, by contracting with another public or private entity.

B. Transportation Questions

1. What are the requirements applicable to transportation of students with disabilities?

The regular mode of transportation provided to general education students must be provided for students with disabilities unless the student’s IEP Team determines that special transportation is needed to meet the individual needs of the student.

2. Can the parent(s) be required to transport his/her student?

No.
3. **If the parent(s) agrees to provide transportation through a contract with the school district, what is the rate of reimbursement?**

Transportation must be provided at no cost to the parent(s). Generally, this would include a reimbursement to parents who agree to transport their student of at least the per-mile allowance approved by the school district.

4. **Is special education support staff (i.e., aides) required on special education buses or on general transportation buses equipped with assistive equipment?**

This is an IEP Team decision based upon the individual needs of a particular student.

5. **Must a student with a disability be picked up inside the residence/home?**

This practice is not typical. Based upon the continuum of services available within the transportation system, the IEP Team should consider the individual ability/disability of the student and determine the appropriate level of service to be offered. Even for students who need specialized transportation as a related service, pick-up points could range from regular bus stops to curb-to-curb service, depending upon the needs of the student and taking into consideration the obligation to safely transport the student while promoting independence.

It is not common practice for school district employees to enter the residence of students who ride a special needs bus. In fact, family members or other responsible parties are typically expected to bring their children to the curbside in the morning and meet them there in the afternoon where they are assisted on and off the bus as necessary by transportation providers.

**C. Extended School Year Questions**

1. **Must IEPs include services during the summer months or extended school year (ESY)?**

It depends on the needs of the individual student. Every IEP Team must consider the student’s need for ESY services at least annually as part of the provision of FAPE. ESY services must be provided only if a student’s IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the student. If ESY services are needed, the IEP must clearly specify which goals and services are being extended, the beginning and ending dates for services, the location, and the amount of time committed.
1. **Who, in the school setting, should monitor the services that students with disabilities should be receiving? How do we hold special education teachers accountable for providing services that are written in the IEP?**

The principal is the instructional leader of the school and is considered to be its site-based manager. As such, the principal and/or his designee on the school campus will participate in and serve as the LEA Representative at IEP meetings. In doing so, an assurance has been given to ensure that FAPE is provided to all students with disabilities and that their IEPs are being implemented. The school principal must assume the responsibility of monitoring and supervising his/her staff in such a way to ensure that they are providing the greatest possible instruction and support to all students. It is also critical that the principal communicate closely with the school district’s special education administrator for problem-solving, collaboration, and compliance, which will demonstrate a unity of effort throughout the organization.

2. **If specified by the IEP, must a general education teacher modify a general education program for a student with a disability?**

Yes. If the student’s IEP requires course modifications, the teacher is required to comply with the IEP. It is anticipated, however, that a collaborative/consultative teacher who may or may not be the case manager for the student would assist the general education teacher in developing and implementing the required modifications.

3. **Who is responsible for modifying curriculum?**

“Adapting the curriculum involves differentiating instruction to provide learners with a variety of ways to process information and demonstrate what they have learned, in order to ‘match’ the way in which each learner learns most effectively.” (Bashinski, Susan M., July 2002)

General and special education teachers should work together to modify the curriculum. General education teachers have content knowledge, while special education teachers have expertise in student characteristics and knowledge of student strengths and needs. It makes sense for them to work together to decide how to differentiate to address individual student needs.

4. **Who is responsible for providing the accommodations for a student with an IEP—special education teachers or general education teachers?**

This is an IEP Team decision.
5. Can the parents of students with disabilities ever be required to provide education services?

No.

6. Who is responsible for monitoring to make certain that accommodations are being provided and IEPs are being implemented?

In Alabama, the assigned student case manager is directly responsible for monitoring, consulting, and teaching with general education teachers in a collaborative role to ensure that accommodations are being provided for a student with a disability. Special education teachers and general education teachers should work collaboratively to continually review, revise, and create appropriate accommodations as needed to provide FAPE to students with disabilities. It is extremely important to remember, however, that overall, it is the school principal who is responsible for supervising teachers to ensure that they are implementing the IEPs of students with disabilities.

IX. REVIEW/REVISION OF IEPs/CHANGE OF PLACEMENT

1. Is a school obligated to continue to provide a service listed on a prior year’s IEP?

A student’s current IEP and placement (defined as the services listed in the IEP) must be implemented unless there is a subsequent IEP developed by an IEP Team. Of course, the IEP Team must meet at least every 12 months to review and revise an IEP and, as part of that review, it could be proposed that a service included on the previous IEP not be continued in the new IEP. If the parent agrees to this Team decision, the IEP services can be changed. If the parent does not agree to the decision, written notice must be given to the parent of the proposed change in placement and the parent can then challenge the proposed change in placement via mediation or initiation of a due process hearing. If the parent requests a due process hearing, the service will continue as part of the student’s “stay-put” placement.

2. When and how can an IEP be changed?

An IEP can be changed at any time that an IEP Team agrees that the student’s needs indicate that a change to the IEP is needed. Changes must be reflected on the IEP or via an appropriate amendment to the IEP, and an IEP cannot be changed unilaterally by the parent or by any school person.

In 2004, the IDEA set out a curious provision allowing for changes to be made to IEPs after the annual IEP meeting but without another IEP meeting. In making changes to a student’s IEP after the annual IEP meeting for a school year, the parent and the school district may agree not to convene an IEP meeting for the
purposes of making such changes and instead may develop a written document to amend or modify the student’s current IEP. Changes to the IEP may be made if the parent agrees in writing, “either by the entire IEP Team … or by amending the IEP rather than by redrafting the entire IEP.”

In Alabama, if it is agreed that an IEP may be amended without an IEP Team meeting, the parent must be provided with a revised copy of the IEP with the amendments incorporated. In addition, if changes are made to the IEP without an IEP meeting, the school must ensure that the student’s IEP Team is informed of those changes. This amendment provision lends itself to potential pitfalls and school administrators must be extremely careful in implementing these provisions.

3. **How often must IEPs be revised/updated/written?**

   The IEP must be reviewed at least annually. The IEP and placement may be reviewed more often, however, and as needed. In Alabama, if the parents or the student’s teacher have reason to suspect that the IEP needs revision, an IEP meeting can be requested at any time. The school must conduct the IEP meeting within 30 calendar days of receipt of the request.

---

### X. STUDENTS WITH DISRUPTIVE BEHAVIORS AND DISCIPLINE

#### A. General Questions Related to Disruptive Students with Disabilities

1. **How do you teach and manage special education students who are out of control?**

   Behavior management (not traditional forms of discipline) is key to addressing behavioral issues for students with disabilities. When a student with a disability exhibits behaviors that are disruptive to the education of the student or others, the IEP Team is required to address this issue either by including behavioral goals in the IEP, conducting a Functional Behavioral Assessment (FBA) and developing a Behavioral Intervention Plan (BIP), and referencing those in the IEP, providing specific services for the student and/or all of the above.

2. **How do you ensure fidelity in the implementation of a BIP when there is significant resistance from teachers, both general education and special education teachers?**

   The IEP will contain reference to the BIP and other behavioral services/goals in place and they must be implemented. School administrators whose duties include supervision of teachers must monitor student services as outlined in IEPs in order to maintain compliance and
the integrity of the special education process and to provide a safe school environment.

3. **What recourse do we have when a student has had every opportunity to complete his/her work, has a behavior plan with a rewards system in place, but refuses to attempt work that is given?**

Convene the IEP Team to discuss behavioral issues, review and revise the BIP as necessary, and make certain to document all good faith efforts to address and provide services designed to correct the undesirable behavior.

4. **Can a school district refer students who demonstrate extreme behavioral misconduct for an assessment by a local mental health psychiatrist without cost to the district?**

No. When a district refers a student for a medical evaluation, this is considered for “diagnostic and educational purposes” and, therefore, would essentially constitute a related service that the district should fund.

5. **If a parent revokes consent for special education services, and the student is dismissed as required, does IDEA’s special discipline provisions apply if the student violates the LEA’s code of student conduct?**

No. Parents may revoke consent in writing for special education services at any time and unilaterally withdraw their children from further receipt of special education and related services. When a parent revokes consent for special education and related services, the IDEA regulations specifically say that the LEA will not be deemed to have knowledge that the student is a student with a disability. The student will be subject to the same disciplinary procedures and timelines applicable to general education students. In other words, the student is no longer entitled to IDEA’s special discipline protections. It is expected that parents will take into account the possible consequences under the discipline provisions before revoking consent for the provision of special education and related services.

B. **Question Related to Functional Behavioral Assessments and Behavioral Intervention Plans**

1. **When would it be appropriate to do a Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP) to address a violation of the Code of Conduct?**

Conducting FBAs and developing BIPs are essential requirements for addressing behaviors that a student exhibits, particularly if the student is
disabled. As soon as a pattern of behavioral issues is present, best practice would dictate that a FBA be conducted and a BIP developed.

For some students, behavior intervention can be as important as academic intervention. Routine and structure are critical when working with students who have behavior problems that impede their learning or the learning of others. When working with a student that exhibits inappropriate behavior at school, the IEP Team, as a matter of best practice, should first complete an FBA to observe when the behavior is occurring to determine what is going on around the student when the negative behavior is being displayed. The FBA may reveal a pattern that will help the IEP Team to understand the student better.

Based upon the information from the FBA, a BIP should be developed. It is extremely important that there is follow through in all rewards/incentives and consequences. It is important to have short-term goals with rewards/incentives and long-term goals with rewards/incentives for the student. The student should be a part of developing the BIP when appropriate. In some instances, the school should request the assistance of a behavioral specialist.

Specifically within the context of disciplining a student, and where the contemplated disciplinary action will constitute a “change of placement” for the student (exclusion for more than 10 days), it is required that an IEP Team conduct a manifestation determination. If the IEP Team decides that the conduct is a manifestation of the student’s disability, the IEP Team is required to conduct an FBA unless the district has already conducted one and implemented a BIP during the previous 18 months before the behavior that resulted in the change of placement occurred. If a BIP has already been implemented, then the IEP Team must review and revise it as necessary to address the behavior currently at issue.

C. Questions Related to the Use of Suspension/Expulsion or Other Disciplinary Removals

1. **May students with disabilities be expelled from a school/district?**

   Yes, if proper procedures for a “disciplinary change of placement” are followed. When a student with a disability is removed completely from the school setting due to an expulsion, special education services must continue to be provided by the LEA. Because some services must be provided to a properly expelled student with a disability, there is no such thing as “true expulsion” for students with disabilities under the IDEA.
2. **May students with disabilities be suspended from school?**

Yes, as long as a unilateral “change of placement” does not occur. If a change of placement will occur as a result of a suspension, then the student’s IEP Team must be involved.

3. **So, what constitutes a “disciplinary change of placement” that would trigger the IEP Team’s involvement?**

The IDEA regulations and the AAC provide that a disciplinary change in placement occurs if the removal of the student is for more than 10 consecutive school days or the student has been subjected to a series of removals that total more than 10 days in the school year and constitute a pattern that is a change of placement because the student’s behavior is substantially similar to the student’s behavior in previous incidents of misconduct and because of factors such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

4. **Do partial days count in looking at when a disciplinary change of placement has occurred?**

Yes. Under the AAC, removals for partial school days of a half day or more will count as one full day toward determining whether a disciplinary change of placement has occurred or will occur.

5. **Who decides whether going beyond 10 days of short-term removal in a school year is a pattern of removals that constitutes a change of placement?**

The IDEA regulations say that “the public agency” decides that. The AAC provides more specifically that, at a minimum, an administrator and the student’s special education teacher will make that determination. If it is determined that the pattern of removals over 10 school days in the school year would be a change of placement, then the IEP Team must be involved. If it is decided that the pattern of removals is not a change of placement, school personnel (in consultation with one of the student’s teachers) have the authority to make the decision as to what services will be provided on Days 11, 12, 13, and so on.

Because this “pattern of removals” language is so vague and uncertain, many school districts treat any removal beyond 10 days in a school year as a “change of placement” and get the IEP Team involved to ensure procedural compliance with respect to any further removals beyond 10 school days in a school year.
6. If a student is suspended beyond 10 school days in a school year or expelled for a longer period of time, is the student entitled to any services?

Yes. If it is determined that it is appropriate to suspend a student beyond 10 school days in a school year (because it is not a change of placement or because there is no manifestation) or expel the student (because there is no manifestation), the IDEA requires the school district to continue to provide FAPE to the suspended/expelled student.

7. What are these services for a suspended/expelled student with a disability supposed to look like?

The IDEA provides that during the suspension/expulsion beyond 10 school days the student must continue to receive services that will enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals developed in the student’s IEP. These educational services may be provided in an interim alternative setting.

Unfortunately, there is not a great deal of authority that helps to clarify what, exactly, this means. In 2006, the U.S. DOE commented that “services so as to enable the student to continue to participate in the general educational curriculum” does not mean “that a school or district must replicate every aspect of the services that a student would receive if in his or her normal classroom. For example, it would not generally be feasible for a student removed for disciplinary reasons to receive every aspect of the services that a student would receive if in his or her chemistry or auto mechanics classroom, as these classes generally are taught using a hands-on component or specialized equipment or facilities.”

In addition, the U.S. DOE commented that while students with disabilities removed for more than 10 school days in a school year for disciplinary reasons must continue to receive FAPE, “we believe the Act modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the student to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the student’s IEP. A school district is not required to provide students suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. However, the special education and related services the student does receive must enable the student to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the student’s IEP.”
8. **When is a “manifestation determination” required?**

The IDEA requires that a manifestation determination be made “within 10 school days of any decision to change the placement of a student with a disability because of a violation of the code of student conduct.” What we clearly know is that a manifestation determination is not required for the first 10 days of suspension during a school year. As explained previously, any further removal will require a determination as to whether it constitutes a change of placement for the student. If it does, a manifestation determination is required to ensure that further removal is appropriate.

9. **What group meets to conduct the manifestation determination?**

Both the federal regulations and the AAC state, “the LEA, the parent, and the relevant members of the IEP Team (as determined by the parent and the school district) must review all relevant information in the student’s file when determining if the student’s behavior was a manifestation.” Typically, it makes sense for the school district to convene the student’s entire IEP Team so that important placement decisions can be made in addition to the manifestation determination.

10. **What is the required link between a student’s disability and his/her misconduct for it to be considered a manifestation?**

The IDEA requires that the manifestation determination be based upon whether “the conduct in question was caused by, or had a *direct and substantial relationship to*, the student’s disability.” In addition, the IEP Team is to determine whether the “conduct in question was the direct result of the LEA’s failure to implement the IEP.” The conduct must be determined to be a manifestation of the student’s disability if the IEP Team answers yes to either question, and the assumption is that a disciplinary change of placement cannot occur.

11. **When the parent(s) of a student and the school personnel are in agreement, via the IEP process, that a student’s placement should be changed (rather than moving toward suspension/expulsion) after the student has violated a code of student conduct, is it considered to be a removal under the discipline provisions?**

Not if the parent(s) of a student and the school district agree, via the IEP Team process, to a specific change in the current educational placement of the student. Where no suspension/expulsion is going to occur, the IDEA’s discipline provisions would not be triggered. Rather, it would be an IEP Team decision that the student’s placement should change. For example, it might be the IEP Team’s decision that the student needs to be evaluated.
and the LRE changed to a more restrictive setting. As long as the IEP Team agrees and the parent is properly provided written notice of the proposed change of placement and does not challenge it, the placement may be changed and the disciplinary provisions would not apply.

12. **Is a student with a disability who is suspended for 10 school days or less during a school year entitled to more than the due process procedures that are mandated for all students?**

No. Essentially, the first 10 days of disciplinary removal in a school year do not trigger any of the IDEA’s special disciplinary procedures. Once 10 days of disciplinary removals have been reached in the school year, however, it must be determined whether any further suspensions would constitute a pattern that is a change of placement that would trigger the IDEA’s disciplinary requirements.

D. **Change of Placement to the Alternative School**

1. **May students with disabilities be placed in an alternative school program?**

Yes, but not unilaterally. The IEP Team must meet to make this change of placement decision.

2. **What do schools do when students with disabilities continue to misbehave in an alternative school?**

Continue to address placement issues via the IEP process, review and revise BIPs, explore the possibility of a more restrictive setting, etc.

E. **Questions Regarding the Use of ISS and Bus Suspension**

1. **May students with disabilities be placed in “in-school suspension” programs?**

Yes. According to the U.S. DOE, a day of in-school suspension is not considered a removal from a student’s current educational program for disciplinary reasons (and, therefore, would not be counted toward the 10-day change of placement count), as long as the student is afforded in the ISS setting the opportunity to continue to appropriately participate in the general education curriculum, to continue to receive the services specified on the student’s IEP, and to continue to participate with nondisabled students to the extent the student would have in the current placement.
2. **Does a bus suspension constitute a day of suspension?**

It depends. The AAC provides that whether a bus suspension would constitute a day of suspension that would be counted toward a change of placement depends on whether the bus transportation is on the student’s IEP as a related service. If the bus transportation is a related service that is specialized to address the student’s disability in some way, it would be treated as a change of placement day, even if the student gets to school in some other way. This is so because transportation, as a related service, is part of the student’s “placement” because it is a service listed in the student’s IEP. If the bus transportation is not part of the student’s IEP as a related service, a bus suspension would not be a suspension that counts toward a change of placement. In those cases, the student and his or her parents would have the same obligations to get the student to and from school as a nondisabled student who had been suspended from the bus. However, school districts must address whether the behavior on the bus is similar to behavior in the classroom that is addressed in an IEP and whether the bus behavior should also be addressed in the IEP or BIP for the student.

F. **The Use of Corporal Punishment**

1. **May corporal punishment be used with students with disabilities?**

Yes, as long as Board policy allows for the use of corporal punishment and specific procedures under the policy are followed. However, with corporal punishment or any other disciplinary measure, it is prudent not to administer it if the behavior at issue would be considered to be a manifestation of the student’s disability. In addition, an IEP Team may specifically prohibit or limit its use.

G. **Questions Concerning Truancy/Attendance Problems**

1. **Are truancy and attendance problems behavioral issues that an IEP Team must address?**

Yes. Clearly, failure to attend school is a behavior that is disruptive to the education of that student. Therefore, the IEP Team must address that behavior by addressing positive behavioral strategies and interventions to address it. It would not be appropriate to report truancy without also appropriately addressing it as a behavioral issue.
2. **What is the principal’s obligation if a student with a disability is hospitalized or experiences a lengthy illness necessitating absence from school?**

The principal should contact the parent to determine the degree of illness and the approximate duration of the student’s absence. Any student with a disability who is covered under IDEA may be served within the home or hospital if the IEP Team determines that it is the student’s least restrictive environment. The school needs to be proactive in following up on the student’s condition to ensure that the student’s educational needs are addressed.

### H. Questions Concerning Dangerous/Criminal Behavior

1. **Why do we have to be responsible for students in local jails?**

Students in local jails reside in your school district’s jurisdiction. Child Find and service requirements must be met for all students with disabilities who reside within your district’s jurisdiction.

2. **Can a school unilaterally (without an IEP Team meeting) place a “dangerous” special education student in an interim alternative educational setting for more than 10 school days?**

Yes, but only if a change in placement has not occurred or in cases involving special circumstances for behavior.

3. **What are the “special circumstances” that would allow the LEA to unilaterally move a student with a disability and not require an IEP Team meeting ahead of time?**

The IDEA contains “special circumstances” that will allow school personnel to move a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is a manifestation of the student’s disability. This special circumstance applies if the student:

   a) Carries a weapon to or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the LEA or state DOE;
   b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LEA or state DOE; or
c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or state DOE.

LEA personnel may move a student to an interim, alternative educational setting up to 45 days without an IEP Team meeting when a “special circumstances” offense has been committed. The IEP Team meeting can occur at a later date to address a manifestation determination and the need for a functional behavior assessment (FBA) and behavior intervention plan (BIP).

4. **What is the maximum number of days a disabled student can be placed in an alternative setting for possession of drugs or a weapon?**

*Unilaterally*, the school can move the student for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student’s disability. However, *the student’s IEP Team* could decide to change the placement via the IEP process, and the IEP Team can determine how long that setting would be appropriate and how long the new IEP will be in place.

5. **So, what is a “weapon?”**

Under the IDEA’s disciplinary provisions, the term “weapon” has the meaning given the term “dangerous weapon” under paragraph (2) of subsection (g) of Section 930 of title 18, United States Code. Under this Code section, the term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length. Alabama criminal law definitions do not apply for purposes of the discipline of students with disabilities.

6. **What is an “illegal drug?”**

The IDEA defines both “controlled substances” and “illegal drugs” as follows:

“Controlled substance” means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act.

“Illegal drug” means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally
possessed or used under any other authority under that Act or under any other provision of federal law.

7. **What is “serious bodily injury?”**

The IDEA references a definition contained in 18 U.S.C. § 1365(3)(h). There, the term "serious bodily injury" means bodily injury which involves: (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; or (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

8. **Can a school press charges against a student with a disability?**

Yes, but caution is advised. The IDEA specifically provides that “nothing in this part prohibits an agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.” While the law does not prohibit contacting criminal authorities to report criminal behavior, schools need to consider each instance on a case-by-case basis and ensure that it has been addressing the student’s behavior appropriately within the educational context. Do not rely on the criminal process as a substitute for what the IDEA requires the school to do.

9. **Can the school call the police when a disabled student has a behavior intervention plan?**

Yes, with the same considerations discussed in the answer to the previous question.

10. **Must there be an IEP meeting for a special education student who is detained by juvenile authorities as a result of the school calling the police but who returns to the school district?**

Yes. The AAC provides that where law enforcement or judicial authorities are contacted by school district personnel reporting an alleged crime committed by a student with a disability, the student’s IEP Team must meet within two (2) weeks of the student’s return to a school setting. At that time, the IEP Team must:

a) Conduct an FBA unless the school district has conducted an FBA during the previous 18 months before the behavior at issue occurred and implement a BIP for the student; or

b) If a BIP has already been developed, review the BIP and modify it, as necessary, to address the behavior.
XI. TRANSFER STUDENTS—IN AND OUT OF STATE

1. Are there special rules concerning development of IEPs for transfer students?

Yes. The IDEA regulations contain provisions regarding in and out-of-state transfer students.

IEPs for students who transfer between school agencies in Alabama: If a student with a disability (who had an IEP that was in effect in a previous LEA in the same state) transfers to a new LEA in the same state and enrolls in a new school within the same school year, the new LEA (in consultation with the parents) must provide FAPE to the student (including services comparable to those described in the student’s IEP from the previous LEA) until the new LEA either (1) adopts the student’s IEP from the previous LEA or (2) develops, adopts, and implements a new IEP that meets the IDEA’s applicable requirements.

IEPs for students who transfer from another state: If a student with a disability (who had an IEP that was in effect in a previous district in another state) transfers to a district in a new state and enrolls in a new school within the same school year, the new district (in consultation with the parents) must provide the student with FAPE (including services comparable to those described in the student’s IEP from the previous district) until the new school district (1) conducts an initial evaluation pursuant to the IDEA (if determined to be necessary by the new district that it is needed in order to meet state criteria for eligibility) and (2) develops, adopts, and implements a new IEP, if appropriate, that meets the IDEA’s applicable requirements.

Transmittal of records. To facilitate the transition for a student who has transferred: (1) The new district in which the student enrolls must take reasonable steps to promptly obtain the student’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous district in which the student was enrolled and (2) the previous district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new district.

2. If evaluation data received on an out-of-state transfer student is consistent with the AAC, but is more than one year old, is the new district required to retest to determine eligibility?

No. As of May 14, 2009, the school district has the discretion to use evaluations that transfer with the student from out-of-state.
3. If an out-of-state transfer student comes to Alabama with an eligibility report that does not meet the AAC and an initial evaluation needs to be conducted, what do we do if a parent does not give consent for the initial evaluation?

Accept the parent’s refusal and send a Notice of Intent Regarding Special Education Services stating that the agency stands ready to evaluate should the parents choose to give consent at a later time. The student will be considered a regular education student since eligibility cannot be determined under AAC guidelines. The new LEA may request mediation or a due process hearing to override the parent’s refusal to consent to the initial evaluation, but is not required to do so.

4. When a student transfers from another state, is it necessary to get the “Notice and Consent for the Provision of Special Education Services” signed before we provide services?

Yes, but only after eligibility in Alabama has been determined. If the student transfers into the new district with an IEP that was in effect in the previous district in another state, the new district, in consultation with the parent, must provide services that are comparable to those described in the previously held IEP until the new district conducts an initial evaluation to determine eligibility under the AAC if needed. If the parent refuses consent for the initial evaluation, the new district may not evaluate. The school district may pursue the evaluation through mediation and/or a due process hearing, but is not required to do so. If the parent does consent to the initial evaluation and the student meets eligibility criteria as per the AAC, the “Notice and Consent for the Provision of Special Education Services” must be obtained before services may be provided under the new district’s IEP.

5. When a student transfers to another school district and the new district requests records, does the Family Educational Rights and Privacy Act (FERPA) require notice of transfer of records to parents from the former district? If so, what if the parents’ address is unknown?

Yes. The former district must send a notice that it is transferring the records to the new district and send the notice to the last-known address of the parent.

6. When a student transfers from out of state and the parent/guardian cannot produce an IEP, what is the procedure if records don’t arrive or, upon arrival, are incomplete?

The federal regulations require that to facilitate the transition for a student, the new school district in which the student enrolls must take reasonable steps to promptly obtain the student’s records, including the IEP and supporting documents and any other records relating to the provision of special education or
related services to the student, from the previous school district in which the student was enrolled, and the previous school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district. If, after taking reasonable steps to obtain the student’s records from the school district in which the student was previously enrolled, the new school district is not able to obtain the IEP from the previous district or from the parent, the school district is not required to provide services to the student. This is because the new school district, in consultation with the parent, would be unable to determine what constitutes comparable services for the student since that determination must be based on the services contained in the student’s IEP from the previous school district. However, the new school district must place the student in the regular school program and conduct an evaluation if determined to be necessary by the new school district. If there is a dispute between the parent and the new school district regarding whether an evaluation is necessary or regarding what special education and related services are needed to provide FAPE to the student, the dispute could be resolved through the mediation procedures or, as appropriate, the due process procedures.

7. Must parental permission be obtained to transfer records to another educational agency?

While parental consent is not required for the transmission of special education records between school districts, parental notice is required to be provided by the district sending the records. The ALSDE, Special Education Services, has a sample form on its Web site for transfer of records.

XII. FERPA/CONFIDENTIALITY/STUDENT RECORDS

1. Is there a specific location that special education records should be kept?

Special education student records should be maintained in a limited access location such as a locking file cabinet or other secure location.

2. Is an IEP considered a confidential education record?

Yes. The IEP is protected by the provisions of the Family Educational Rights and Privacy Act (FERPA) and the IDEA’s records provisions.

3. Who has access to special education records?

Records may be shared with:

a. Parents
b. Student
c. State Department of Education Representatives
d. Federal Education Agency Representatives
e. Local Education Agency Representatives*
f. Other State Agency Representative* (parental consent must be provided)

*Limited to those representatives who have a legitimate educational interest in the student’s educational program.

4. May course offerings be coded for special education on a cumulative record?

Yes. Information Now (iNOW) is designed/programmed for such coding.

5. What specific records must be sent to another education agency when a student transfers?

ALL educational records should be transferred with the student.

6. Must parental permission be obtained to transfer records to another educational agency?

Parental consent is not required for the transmission of special education records between school districts, but parental notice is required. The Alabama State Department of Education has a sample form on its Web site for transfer of records.

7. How long must special education records be kept after a student exits the program?

At the end of a five-year retention period, the school district must inform the parents when personally identifiable information contained in education records collected, maintained, or used is no longer needed. Information must be destroyed in a manner whereby confidentiality of the information is maintained.

8. Must parental permission be obtained to destroy records?

No. At the end of the mandated five-year retention period, the school district must provide written notice to the parent(s) informing him/her that the special education records are no longer needed. The parent(s) may choose to receive the records or to have them destroyed by the district. When the school district is unable to reach the parent(s), the information no longer needed may be destroyed.

9. If a parent believes that information in the student’s record is misleading or inaccurate, must the school district remove the information upon the parent’s request?

A parent who believes that information in the education records collected, maintained, or used are inaccurate or misleading or violate the privacy or other
rights of the student may request that the district amend the information. The district must decide on the matter within a reasonable period of time from receipt of the parent’s request. If the school district decides not to amend the information in accordance with the request, written notice must be provided to the parent. The notice must advise the parent of the right to a local hearing before the school district in accordance with the school districts records policies and procedures.

10. Must a school district provide a parent with copies of a student’s educational records upon request, or is it legally acceptable for the school district to provide the parent access to these records for review and inspection?

Parents may inspect and review all educational records relating to the student that are collected, maintained, or used by the school district. Parents must be given the opportunity to review their child’s educational records without unnecessary delay and before any meeting regarding an IEP or before a due process hearing or resolution session is conducted.

XIII. STUDENTS WITH DISABILITIES PLACED IN PRIVATE SCHOOLS

A. Questions Regarding Students Placed by Their Parents

1. What are our financial responsibilities for students placed by the parents in a private school?

A school district is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if the district made FAPE available to the student, but the parents elected to place the student in a private school or facility. However, the IDEA does contemplate that school districts are to determine what “equitable services” they might make available to these students, such as providing them the opportunity to receive speech services, if eligible, at the local public school closest to the private school.

B. Questions Regarding Students Placed by the School District

1. What are our responsibilities for the IEPs of students placed by the school district in a private school?

The school district must ensure that students with disabilities who have been placed in or referred to private schools or facilities by the district are provided special education and related services in accordance with the student’s IEP and at no cost to the parent. Students with disabilities placed by the school district must be provided an education that meets state and local standards that apply to education (including the requirements under IDEA and the AAC, except provisions related to
highly qualified and personnel qualifications), and provided all of the rights of a student with a disability who is served by a school district.

Specific provisions apply when a school district places a student in a private setting as follows:

a) Before the school district places a student with a disability in, or refers a student to, a private school or facility, the district must conduct an IEP for the student. The school district must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the district must use other methods to ensure participation by the private school, including individual or conference telephone calls;

b) After the student with a disability enters a private school or facility, any meetings to review and revise the student’s IEP may be conducted by the private school or facility at the discretion of the district;

c) If the private school or facility initiates and conducts an IEP meeting, the district must ensure that the parents and a district representative are involved in any decision about the student’s IEP and agree to any proposed changes in the program before those changes are implemented;

d) The district must ensure that an IEP is developed and implemented for each student with a disability who is enrolled in a private school and receives special education and related services; and

e) Even if a private school or facility implements a student’s IEP, the responsibility for compliance with these rules remains with the school district and the state.

XIV. STATE ASSESSMENT/GRADING/CREDITS

A. Assessment Questions

1. Is the IEP Team required to explain the reasons for a determination that a student must take an alternate assessment?

Yes. The IDEA regulations provide that where the IEP Team determines that a student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, the IEP must include a “statement of why (1) the student cannot participate in the regular assessment and (2) the particular alternate assessment selected is appropriate for the student.
2. **Are students with disabilities to be administered school district-generated assessments as well as state assessments in the general education setting?**

The IEP Team determines the location where the student will be assessed.

3. **Who determines the special education student’s participation in state assessments, as well as school district testing procedures?**

The extent of participation is determined by the IEP Team.

4. **May assessments utilized in the state assessment program be accommodated for students with disabilities?**

Yes. In general, each school district must implement procedures that will ensure that all students with disabilities are provided the opportunity, consistent with their ability and as determined by the IEP Team, to participate in state assessments as do their non-disabled peers. The IEP Team must determine what kinds of accommodations are necessary and appropriate. Unless the assessment manual states otherwise, students with disabilities must be administered assessments appropriately accommodated for their individual needs.

For more information, refer to the Alabama State Department of Education Web site at www.alsde.edu, click on “Offices,” click on Office of Student Learning, click on Assessment and then “Publications,” and go to *Policies and Procedures Special Populations Revised.*

5. **Why do students with disabilities have to be administered state assessments on their grade level rather than their actual level of functioning?**

It is a requirement of the No Child Left Behind Act.

6. **Why are students with disabilities held to the same standards as their non-disabled peers?**

The No Child Left Behind Act requires certain things in an attempt to ensure that all students have an equal opportunity to receive a high-quality education. Although there is some flexibility for students with significant cognitive disabilities, the majority of all students, including students with disabilities, are to be held to high standards. The idea that students with disabilities finally count is wonderful, but in the next reauthorization of NCLB it is hoped that revisions to the law will consider the need for more flexibility for some students with disabilities.
B. Grading/Earning Credits Questions

1. How many times should a student be retested on work that has been accommodated?

This should be an individual decision based on the content and the student’s individual needs.

Because accommodations are things we do for students with disabilities to lessen the impact of their disability in the teaching/learning environment, those accommodations should not be held against the student. An example of an accommodation for the same assignment would include that the student with a disability is required to complete only 15 multiplication problems or is allowed more time to complete the work. When accommodations are made for the student with a disability, the content standards are the same. Accommodations in secondary coursework will not prevent the student from receiving course credit toward his/her selected diploma option.

Retesting a student on un-mastered work could also be seen as teaching to mastery. Teaching to mastery can reduce achievement gaps when teachers ensure students master concepts before moving on to more advanced concepts.

2. Is there a specific procedure for assigning grades for students with disabilities?

Procedures for assigning grades and grading policies are within the discretion of the school district. The same procedures/policies must be applicable to students with disabilities and students without disabilities.

3. Must students with disabilities be given the opportunity to earn Carnegie units?

Yes. Each student with a disability must be given the opportunity to earn Carnegie units consistent with the IEP Team decision and the program of study.
A. Diploma Option Questions

1. Must a student with a disability who is IDEA eligible receive an Alabama High School Diploma if he/she earns the required number of Carnegie units as prescribed by the diploma pathway?

Yes.

B. Promotion/Retention Questions

1. What are the legal ramifications of not promoting a student with a disability with their non-disabled peers?

The Alabama Administrative Code (AAC) does not contain regulations for promotion and retention. Each LEA should have its own policies regarding promotion and retention based on the number of credits required for graduation in high school and the time required for the completion of these credits in Grades 9-12.

The same applies for elementary grades with the school/LEA deciding which classes, number of classes, etc., must be passed in order to progress from one grade to the next grade.

Students with disabilities can be retained; however, careful consideration in the development and implementation of the student’s individualized education program (IEP) should prevent student failure in most cases.

If a student with a disability appears to not be on track to meet promotion standards, the IEP Team should reconvene immediately to consider the following:

- Is the current IEP for the student's academic, social, emotional, and behavioral needs appropriate?
- Is the manner of assessment appropriate, including accommodations and modifications identified in the IEP?
- Are all the services required by the student to make progress in the general education curriculum appropriately identified in the student's IEP?
- Is the student receiving all the services identified in the IEP?
- Are assessments conducted consistent with the IEP?
2. Is graduation a change of placement for a student with a disability?

Generally, graduation is the ultimate change of placement! Graduation with a regular high school diploma is a change of placement because the student will no longer be receiving FAPE. Obviously, then, written notice of a proposed change of placement via graduation must be provided to the parent. However, a reevaluation is not required before graduation with a regular high school diploma or exit due to exceeding the state’s age requirement of 21. Rather, the school district must provide such students with a “summary of the student’s academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student’s postsecondary goals.”

XVI. EQUAL ACCESS/EQUAL TREATMENT ISSUES

A. Equal Access Questions

1. Are students with disabilities entitled to a full school day program of instruction?

Yes, unless a student’s IEP states otherwise because the student’s individual needs are such that a full day is not appropriate for the student. Generally, students with disabilities have a right to access the same services that nondisabled students have available to them, including the regular length of the school day. By way of example, the Office for Civil Rights (OCR) has asked the ALSDE to enter into a Resolution Agreement to ensure that no student has a shortened school day due to transportation issues. Therefore, unless a student’s IEP provides otherwise, that student must be in class when the bell rings in the morning to begin school and when the bell rings in the afternoon to end school.

B. Participation in Non-academic/Extracurricular Activities

1. Must non-academic or extra-curricular activities be provided for students with disabilities?

Yes. Students with disabilities must be afforded an equal opportunity to participate in all non-academic or extra-curricular activities that are available to non-disabled students. However, for certain activities, such as sports, students with disabilities are required to meet eligibility requirements in spite of their disabilities—meaning that must try out for and be judged under the same criteria as nondisabled students.
1. What kind of special education in-service is appropriate for teachers?

This is within the school district’s discretion. It is suggested that you consult your district’s *Special Education Plan for Students with Disabilities*, as it should specify appropriate in-service training opportunities for teachers. In addition, you should consult with your district’s special education director/coordinator who can assist with further information regarding appropriate trainings for teachers. There are specific in-service topics that are required for all teachers, administrators, and support staff that must be addressed annually. These include (1) Confidentiality, (2) Special Education Process, and (3) Shortened School Day. Additionally, Awareness Training is a required in-service for all new employees who have not previously participated in this training.

2. May a special education teacher provide instruction to students with more than one disability in his/her classroom?

Yes.

3. Must paraprofessionals be trained to work with students with disabilities?

All paraprofessionals must meet the minimum requirements under Highly Qualified Teacher status in order to work with students. The following Web site link will allow you to view the qualifications for employment of paraprofessionals:


4. Can special education teachers be assigned other duties?

Yes. Special education teachers can be assigned other school-related duties as specified by their contracts (and “other duties as assigned”) as long as the needs of special education students are met.

5. Can a special education teacher be assigned/required to teach a general education class/subject?

Special education teachers employed with state and federal special education funds cannot be assigned to non-special education duties aside from the normal schoolwide duties unless paid from non-special education monies for those duties.
6. **To what extent can a teacher carry out recommendations of a related service provider?**

The school district is required to provide qualified personnel to provide all special education and related services to its students. Service providers must hold proper certification or licensure in the areas in which they provide services to students. When the IEP is developed, the frequency, duration, and location of the related service is determined and, at that time, the roles of each person providing the education and services to the student should be determined. For example, if it is determined that a student will receive physical therapy as a related service, the IEP Team should discuss to what extent and under what conditions others can assist in carrying out activities under the direction of the therapist in order for the student to meet his/her IEP goal(s). In this case, the teacher or paraprofessional is assisting the student in meeting his/her goal, not providing physical therapy.

7. **Does a substitute teacher have to be provided to cover special education classes?**

Yes. In the absence of a special education teacher, or other staff member essential to the daily supervision and safety needs of students with disabilities, a substitute teacher must be provided.

8. **Is there a recommended case load number for collaborative teachers/case managers?**

The maximum number of records per case manager/teacher is 20. For a speech/language pathologist, the maximum number of records is 30. The number of records to manage, however, does not represent the number of students that a teacher will serve.